



Department of Development Services  
Planning Division  
Meeting Minutes of the  
Planning & Zoning Commission  
(Approved)

---

---

**REGULAR MEETING OF THE PLANNING & ZONING COMMISSION**  
**TUESDAY, NOVEMBER 17, 2009**

---

---

**Commissioners Present**

Sandra Bobowski  
Temple Shannon  
David Blatt  
Fran Reale

**Staff Present**

Roger J. O'Brien  
Kim Holden  
Don Chapman  
Jonathan Mullen  
Jillian Hockenberry

**Commissioners Absent**

Edwin Vargas, Jr.  
John Lupo, Jr.  
Gerry Pleasant, Alternate  
David Jorgensen, Alternate

---

---

**I. Minutes – October 27, 2009**

On a motion made by Commissioner Blatt, and seconded by Commissioner Reale, the minutes of October 27, 2009 were tabled.

On a motion made by Commissioner Blatt, item III (b) was taken out of order and moved to the beginning of the agenda. All Commissioners voted in favor.

**III. (b) 901-909-941 aka 915 Main St, Owner to be present to discuss expiration of permits.**

Mr. Roger O'Brien stated that Mr. John Rose of Corporation Council was present at the meeting in order to assist the Commission with any questions they might have regarding 901-909-941 Main Street.

Mr. O'Brien stated that the special permit conditions of approval have not been met for the 901-909-941 Main Street for both the Planning and Zoning Commission and the Redevelopment Agency. He stated that Mr. David Nyberg, the owner, was present at the meeting in order to explain the situation.

Mr. David Hoops, representing the owner, stated that the largest problem is getting the Kyto restaurant to sign up as a tenant. Mr. Hoops stated that the Kyto representatives are ready to submit building permits and plans as soon as the next week. He also stated that the design approved last December was tenant specific with the Kyto logo and rooftop structure. Therefore, if Kyto is not on board, then there is no reason to go through with that design. He stated that

either Kyto will be on board and they can all move forward, or they will not be on board. In that case, he asked for a 60 day extension to come up with a new design or decide what to do next. He stated that he could not promise that everything would be done within those 60 days though, especially if Kyto decided they were not on board.

Mr. Hoops stated that another problem they are having is that they are not able to pull permits to do work at this time. If they were to receive a 60 day extension, and the Commission treated the special permit as still in effect, then they would be able to move forward with building the approved façade. Mr. Hoops concluded by asking the Commission to look past these issues and work with the owner by granting the extension.

Commissioner Bobowski stated that even though the owner has made a request for an extension that she believed the permit has expired. Mr. Hoops stated that his interpretation of Section 68 (E)(3)(g) of the zoning regulations is that it is left to the discretion of the Commission to decide whether a permit has expired. He then stated that the issue with a re-application process is that it takes time, and doing that would only hurt the progress of this project.

Commissioner Bobowski questioned the request for an extension because there have been multiple deadlines set in the past that were not met. Mr. Hoops explained that a failure between tenant and landlord to come to agreement about who is going to pay for the façade is the reason why the project has not met any deadlines so far. He stated that if they find out that they do not have a deal with Kyto, then they will be back in front of the Commission as early as the next meeting to determine what to do next.

Billy Morrissey, representing Kyto, stated they are not going anywhere because they have already invested a lot into the project. He stated that they do want to move forward and they are in the process of negotiating a deal. He stated that he hopes to have an answer of the outcome for the Commission by the next week.

Commissioner Bobowski confirmed that Mr. Morrissey was aware of and in agreement with the approved plans. Commissioner Blatt asked what the issue between them and the landlord was if they were in agreement with the plans. Mr. Morrissey stated that the issue is the negotiation of who is going to pay for what in regards to the façade. He stated that he does not know how much the building of the façade is going to cost, therefore he is having trouble coming to an agreement since he does not know whether he will be able to afford it.

Mr. Nyberg stated that they are committed to finishing the project whether they have a tenant or not, therefore he is asking for the extension so they have more time to resolve the negotiation.

Commissioner Blatt questioned whether the Commission has the authority to extend an expired permit.

Mr. Rose stated that after thoroughly reading the letter dated October 27, 2009 from David Panagore, it clearly states that the permit has expired and that the appropriate document has been filed in the land records stating that that is the case. Mr. Rose also noted that Mr. Nyberg was obligated to appear before the Commission every month and this did not occur. He questioned

whether the Commission could extend the permit by law and he said he would research it and get back to Mr. O'Brien with an answer. He stated that if the Commission could extend that permit that he thought it should be with conditions such as a performance bond.

Mr. Nyberg stated that he had invested \$140,000 with the Redevelopment Agency therefore he did not think a performance bond would be necessary.

Mr. Hoops stated that neither Mr. Varenhorst nor Mr. Nyberg knew that he was supposed to attend every Planning and Zoning Commission meeting. Commissioner Bobowski stated that Mr. Nyberg had in fact offered to do so. Mr. Nyberg responded by saying because the status of the application remained unchanged, he did not think it was necessary to attend the meetings.

Mr. O'Brien stated that he had received a message from Mr. Harvey Leiben stating that the materials for the 915 Main Street façade that were approved by the Commission are not what was actually being used.

Mr. Varenhorst explained that there was a substitution of materials made during construction, however, he believed that it is indistinguishable from the original and sturdier than what was approved. Commissioner Bobowski said she would like to have Mr. Leiben's opinion on this issue as well.

Mr. O'Brien suggested that based on the letter from David Panagore, the applicant apply for an extension and post a bond for the work that is incomplete.

Mr. Nyberg stated that after already investing so much money into the project, he could not find any reason not to finish it and therefore disagreed with the performance bond.

Commissioner Reale asked if \$140,000 that the Redevelopment Agency retained was part of the purchase price. Mark McGovern, Deputy Director of Development Services, stated that the \$140,000 is 10% of the purchase price.

Mr. Hoops stated that work approved by the Redevelopment Agency is the same work approved by the Planning and Zoning Commission, therefore the \$140,000 serves the same purpose as a performance bond would. Mr. McGovern confirmed that the Redevelopment Agency approved the same plans as the Planning and Zoning Commission.

Commissioner Bobowski asked Mr. Rose to determine whether the permit could be extended, and if so, whether Mr. O'Brien could be given the authority to approve permits if a performance bond was posted.

Mr. Nyberg agreed that he would be able to provide a scope of services and cost estimate for the rest of the work.

Commissioner Bobowski explained to Mr. Nyberg that if Mr. Rose confirms that the permit can be extended, then they must provide a scope of services and performance bond so Mr. O'Brien can have the ability to approve permits for further work.

Mr. O'Brien stated that if Mr. Rose confirms that the permit cannot be extended, then the applicant would have to apply to modify their conditions of approval and go before the Commission at the next meeting.

The Commission agreed to allow Mr. O'Brien to have the authority to approve permits on a temporary basis once a cost estimate and performance bond was provided by the applicant if in fact Mr. Rose confirmed that the special permit could be extended. A formal extension by the Commission would put in place once all details became known.

## **II. Public Hearing**

Chairperson Bobowski opened the public hearing.

- a. **89 Arch Street-** Special Permit for the sale of liquor, night club, and off-site parking in a B-1 district.

Mr. John Gale stated at the last meeting the Commissioners had a few questions regarding the application, and that he was here to provide some answers.

Mr. Gale addressed the floor plan of 89 Arch Street which showed seating for 55 people. It showed a dance floor, bar stools, and a variety of cushioned seating. He stated that although the Fire Marshall approved occupancy of 160 people, the applicant does not anticipate an attendance of that many people at once.

Mr. Gale addressed the café liquor permit application and how the Fire Marshall agreed to sign off at the same time as Zoning. However, because Zoning had still not signed it, the Fire Marshall had recently done so.

Mr. Gale addressed the food license that the State Liquor Control requires for a café liquor license. He stated that a Class I food license is what Sarah Richards, the agent working on the case, told them they will need. Mr. Gale stated that she told them a kitchen is not necessary for a café liquor license.

Mr. Gale addressed the advertising that staff had provided at the last meeting. He stated that the Hispanic Professional Network had put out this advertising without confirming it with the owner in hopes to have an event at 89 Arch Street.

Mr. Gale addressed the security that will be provided for 89 Arch Street. He stated that Sheldon Dennis had provided a list of other night clubs in Hartford, Windsor and New Britain that Underground Security has worked for in order for the Commission to have references.

Mr. Gale addressed a recent conversation with the owner of the Arch Street Tavern, Jerry Collins. He stated that they discussed his concerns and that Mr. Collins still remains opposed to the application.

Mr. Gale addressed the parking situation. He stated that the valet service will be provided for the customers so that they have the option to use it. He stated that they do not feel as though all of the customers will take advantage of it, but it will be made available to provide more eyes on the street and to prevent any illegal parking.

Commissioner Bobowski discussed the safety issues that the lowered sidewalk may cause when both 89 Arch Street and the Arch Street Tavern let out at the end of the night.

Mr. Gale reiterated how the applicant has no relation to the last operator of 89 Arch Street and that it should not result in the denial of the application.

Commissioner Bobowski asked if the valet parking would be available every night that the night club was open. Mr. Gale stated that it would definitely be available at least Thursday through Saturday.

Commissioner Reale expressed her concern for the amount of people in the night club, the preparing and serving of food and alcohol, and how that mix will affect the surrounding environment. The requirements of the State Liquor Commission and Public Health Department were then discussed again.

The public hearing was closed.

b. **166-168 Franklin Avenue**- Special Permit for mixed use residential structure with off-site parking.

Mr. O'Brien stated that the applicant had still not submitted anything further to complete his application. He stated that staff recommended denying the application if it remained incomplete at this meeting.

The public hearing was closed.

c. **170 Scarborough Street**-Construction of a single tennis court, a pool and a pool house in the 100 foot upland review area.

Mr. O'Brien read the public notice.

Marc Goodin, of Meegan & Goodin Engineers, presented a summary of the application and answered the Commissioners questions.

Commissioner Blatt questioned the location of the rain garden and Mr. Goodin discussed the reasons for it and other possibilities.

The public hearing was closed.

### **III. Regular Meeting**

a. Consideration of Public Hearing Items

- i. **89 Arch Street-** Special Permit for the sale of liquor, night club, and off-site parking in a B-1 district.

Commissioner Bobowski stated that there was a letter submitted from Jerry Collins, the owner of the Arch Street Tavern, and encouraged the Commissioners to read it.

Commissioner Blatt questioned if they could grant a special permit for a limited time. Mr. O'Brien said that they could, but they may want to give them conditions of approval rather than do that.

The Commissioners discussed that a night club is an intense use for this location, and questioned if any night club should be opened there.

On a motion made by Commissioner Reale, and seconded by Commission Shannon, the application was denied.

The following Commissioners voted in favor of the motion: Bobowski, Shannon and Reale. Commissioner Blatt abstained from the vote.

- ii. **166-168 Franklin Avenue-** Special Permit for mixed use residential structure with off-site parking.

On a motion made by Commissioner Blatt, and seconded by Commissioner Reale, the application was denied without prejudice.

The following Commissioners voted in favor of the motion: Bobowski, Shannon, Reale, and Blatt.

- iii. **170 Scarborough Street-**Construction of a single tennis court, a pool and a pool house in the 100 foot upland review area.

On a motion made by Commissioner Blatt, and seconded by Commissioner Reale, the following resolution was passed:

Whereas, The Planning and Zoning Commission, in its role as the Inland Wetlands Agency has, under Section 9.1 of the Inland Wetlands and Watercourses Regulations, reviewed an application for a wetlands permit to construct a single tennis court, a swimming pool, a foot pool house, and a pool deck in the 100 foot upland review area for wetlands located at 170 Scarborough Street; and

Whereas, The applicant has modified the plans of their previous wetlands application which was approved on April 14, 2009; and

- Whereas, Approximately 1,148 square feet of wetlands that is currently manicured lawn will have to be disturbed to construct the tennis court; and
- Whereas, The applicant will install a 1280 square foot rain garden at the southeast corner of the property abutting the Park River to mitigate the disturbed wetland soils; and
- Whereas, Construction of the swimming pool, pool house and pool deck will be in the 100 foot upland review area; and
- Whereas, Silt fencing and soil stabilization techniques will be used to protect areas out side the work area from disturbance; and
- Whereas, The proposed project will have a minimal impact on the wetlands; Now Therefore Be It

RESOLVED: The City of Hartford Planning and Zoning Commission, in its capacity as the City's Inland Wetlands Agency, hereby approves the wetlands permit to construct a single tennis court, a swimming pool, a pool house, and a pool deck in the 100 foot upland review area for wetlands located at 170 Scarborough Street as shown in the drawings entitled "Property/Boundary/Topographic Survey" scale 1 inch equals 40 feet, "Grading Plan", and "Notes and Details" scaled 1 inch equals 20 feet, prepared by Meehan & Goodin Engineers – Surveyors, P.C., 387 North Main Street, Manchester, CT 06042, dated February 13, 2009 and revised on August 18, 2009 and September 14, 2009.

RESOLVED: This Seventeenth Day of November, 2009.

The following Commissioners voted affirmatively: Bobowski, Reale, Shannon, and Blatt.

#### **IV. Old/New Business**

#### **V. Adjournment**

Respectfully submitted,

---

Roger J. O'Brien, Secretary/Director